



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: March 30 , 2021 6:30 PM**

This meeting of the Barnstable Conservation Commission is being recorded and transmitted by the Information Technology Department of the Town of Barnstable on Channel 18. Under MGL Chapter 30A Section 20, anyone else desiring to make such a recording or transmission must notify the Chair.

The Conservation Commission's Public Hearing will be held by remote participation methods as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom link or telephone number and access code for remote access below.

### **Join Zoom Meeting**

<https://zoom.us/j/95717279687>

**Meeting ID: 957 1727 9687**

**888 475 4499 US Toll-free**

3. Applicants, their representatives and individuals required or entitled to appear before the Conservation Commission may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to [Darcy.Karle@town.barnstable.ma.us](mailto:Darcy.Karle@town.barnstable.ma.us), so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing [Darcy.Karle@town.barnstable.ma.us](mailto:Darcy.Karle@town.barnstable.ma.us). Comments should be submitted at least 8hrs prior to the hearing.

### **REMINDER TO APPLICANTS:**

**FEEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200 MAIN STREET, HYANNIS, 02601**

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, and Clerk George Gillmore. Also present were Commissioners Dennis Houle, Larry Morin and Pete Sampou. Commissioner John Abodeely was absent.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant, Kim Cavanaugh.

### **I. REQUESTS FOR DETERMINATION**

**A. Raymond J. & Kristin S. Sexton.** Proposed vista pruning at 573 Santuit Road, Cotuit as shown on Assessor's Map 007 Parcel 007. DA-21017 (From 3/16)

The applicant was represented by John O’Dea, P.E. from Sullivan Engineering and Consulting.

There were no questions from Commissioners.  
There was no public comment.

A motion was made to approve the application as a negative determination.  
Seconded and voted unanimously by roll call.

- B. 1812 South County Road LLC.** Request to review and confirm the wetland boundary as delineated at 1812, 1850, 1852 South County Road, Marstons Mills as shown on Assessor’s Map 098 Parcels 008-002, 008-003, and 008-004. DA-21016 **(from 3/16) Tabled from 3/9/2021 Request for continuance to 3/30/2021.**

The applicant was represented by David Haines from Haines Hydrogeologic Environmental Consulting.

A watershed analysis dated March 29<sup>th</sup> was submitted.

**Issues discussed:**

- There is a seasonal water body. A question was raised if it is a vernal pool? It is shown on NHESP map as a potential vernal pool.
- Commission would like the applicant to get verification and certification if it is a vernal pool.
- It is anticipated there may be a future project application for this site.

There was no public comment.

A motion was made to approve a positive determination confirming delineations and subject to the applicant proceeding with vernal pool certification.  
Seconded and voted unanimously by roll call.

- C. Joseph T. and Elin M. Lamb.** Proposed replacement of a sewage disposal system serving a guest cottage at 20 Marchants Mill Road, Hyannisport as shown on Assessor’s Map 266 Parcel 028. DA-21018

The applicant was represented by Mike Ball from Marsh Matters Environmental.

There were no questions from Commissioners.  
There was no public comment.

A motion was made to approve the application as a negative determination.  
Seconded and voted unanimously by roll call.

**II. NOTICES OF INTENT**

- A. Stephen M. & Beth F. McParland Trustee.** To construct a patio and removal of invasive species at 150 Carriage Road, Osterville as shown on Assessor’s Map 071 Parcel 015-003.**SE3-5856 (From 3/16)**

The applicant was represented by John O’Dea P.E. from Sullivan Engineering and Consulting and Peter Hansen from Peter Hansen Design.

**Issues discussed:**

- A mechanical removal of invasive species will be done before the replanting.
- A 6’ row or strip of plants will be put into the area along the bulkhead.
- There was construction going on while they were surveying the project so the plan may be off by a couple of inches. Note was put on the plan in case there are future filings.

- Staff would like 3 year monitoring reports.
- A revised landscape plan should be submitted.

There was no public comment.

A motion was made to approve the project subject to a revised planting plan to show the strip as discussed in front of the split rail fence with vertical complexity with a special condition annual monitoring report for 3 years.

Seconded and voted unanimously by roll call.

**B. Janet Holian, Trustee.** Proposed addition, driveway and garage at 250 Windswept Way, Osterville as shown on Assessor's Map 051 Parcel 012. **SE3-5858 (From 3/16)**

The applicant was represented by John O'Dea P.E. of Sullivan Engineering and Consulting.

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted unanimously by roll call.

**C. Dan and Karen Baird.** Extension of the original Town-owned culvert. The original culvert is approximately 15' long and has been extended approximately 28' with 30" HDPE corrugated pipe at 27 Falcon Road, West Barnstable as shown on Assessor's Map 196 Parcel 032. **SE3-5860**

- The application relates to a previous Enforcement Order.
- After a site meeting there are a lot of questions that still need to be answered for this project.
- Part of the project is on Town property. The applicant needs to have an agreement with the Town.
- There is a question on if this is a perennial or intermittent stream and if stream crossing standards apply.

The applicant was represented by Jeff Plante of Environmental Strategies and Management, and Brad Holmes from Environmental Consulting and Restoration.

The Bairds put the culvert extension in to access their property.

They are working with Griffin Beaudoin from the Town on the project.

They are requesting a continuation in order to get the questions answered.

**Issues discussed:**

- A question was raised if any interim work that needs to be done prior to approval. It is working currently so no immediate work needs to be done.
- Griffin had mentioned there are no funds available from the Town to replace the culvert.
- David Anthony needs to be consulted relative to agreements with the Town.
- There was discussion regarding the pipe the Bairds' used and if it is sufficient for the project.
- The pipe installed is rated for a 40 ton vehicle to drive over. A fire truck or large vehicle would be able to drive over it.
- The roadway was gravel prior to the project being done. Stone has been put in to hold back potential erosion. There were no signs of erosion at the site meeting. They will address stabilizing the area when the project is done.
- Compaction tests need to be done when backfilling the pipe. They need to find out if these tests were done during construction.

- There was discussion on erosion and load capacity of the new smaller pipe that was put in.

There was no public comment.

A continuance was requested to July 6, 2021.

A motion was made to continue the project to July 6, 2021.

Seconded and voted unanimously by roll call.

- D. Ethan & Sandra Bornstein.** Construct 14' x 18' pool with associated fencing and equipment; construct porch addition; landscaping at 624 Poponessett Road, Cotuit as shown on Assessor's Map 007 Parcel 001. **SE3-5859**

The applicant was represented by Dan Ojala PLS, PE of Down Cape Engineering and Consulting.

**Issues discussed:**

- A question was raised if any trees are going to be removed. No trees will be removed.
- There is ample sun in the area to support the wildflower mix.
- There will be 3 year monitoring reports to show it is doing well.
- The walkway going down to the pier should remain close to 4'. The plants did not do very well this year. They could over seed the area to make sure it remains 4'.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing mitigation calculations and annual monitoring reports for the years.

Seconded and voted unanimously by roll call.

- E. Raymond J. & Kristin S. Sexton.** To construct and maintain stairs, boardwalk, pier, ramp and float at 573 Santuit Road, Cotuit as shown on Assessor's Map 007 Parcel 007. **SE3-5861**

The applicant was represented by John O'Dea, P.E. of Sullivan Engineering and Consulting.

Comment letter dated 3/30/2021 from Waterways had no objections to the project.

Comment letter from DMF dated 3/22/2021 was read in to record.

**Issues discussed:**

- A question was raised if this is a seasonal dock. It is proposed as a permanent dock. A comment from Natural Resources stated there was nothing to be protected there.
- There is a mix of permanent and seasonal piers in the area.
- Discussion on seasonal or permanent pier. Contractors will not go into Shoe String Bay to do seasonal piers any longer. There have been no ice issues within the previous 5 years. It would be better to put in a permanent pier in once rather than taking a seasonal in and out.
- Both on the Mashpee and Barnstable side people are leaving their ramps and piers in all year long.

**Public Comment**

Jake Angelo - commercial shell-fisherman. Concern about Conservation approving the project so easily. Questioned if it a dinghy dock. It is a dinghy dock with no motorized boat. He stated there are a lot of violations going on in this area and this should be monitored.

Patricia Farinha - asked if this is rated as a low shellfish area. Yes and it is always closed. They are trying to change back what has been done. Because it is rated low docks keep being allowed to be put in. The area will never be able to be brought back.

A motion was made to approve the application as submitted.

Seconded and voted by roll call.

5 aye

1 nay

Motion carries.

- F. Red Lily Pond Project Association, Inc.** Cutting and removing nuisance aquatic weeds using a mechanical harvester (Eco-Cutter), to improve the water quality and habitat from Red Lily Pond and Lake Elizabeth as shown on Assessor's Maps 226 and 227. **SE3-5862 Request for continuance to 4/13/21.**

The applicant has submitted a request for continuance without testimony until April 13<sup>th</sup> in order to have the project considered under the Ecological Restoration Limited Project provisions.

A motion was made to approve the continuance to April 13<sup>th</sup>, 2021.

Seconded and voted unanimously by roll call.

### **III. AMENDED ORDER**

- A. New Rushy Marsh Realty Trust.** Amendment requests to the original Order of Conditions include addition of a sound wall with repurposed granite blocks, area of granite pavers, recirculating water feature, minor changes to previous stone wall and paths and increased mitigation plantings within the 100' buffer at 1541 Main Street, Cotuit as shown on Assessor's Map 017 Parcel 007. **SE3-5767**

The applicant was represented by Attorney Mike Ford.

The OOC was issued to New Rushy Marsh LLC. They filed as New Rushy Marsh Realty Trust. It should be changed to LLC when the Amended Order is issued.

Sean Reardon from Tetra Tech and Chris Dindal, the Landscape Architect were both present.

#### **Issues discussed:**

- Staff approves planting plan.
- The details of the retaining wall were discussed. The granite wall is 10 ½ feet tall.
- Attorney Ford advised the Building Commissioner required a building permit.

There was no public comment.

Monitoring reports are required under the original order.

A motion was made to approve the amended order as submitted.

Seconded and voted unanimously by roll call.

### **IV. CONTINUANCES**

- A. James G. & Catherine C. Fair.** Proposed improvements to include a landscape wall with mitigation and restoration plantings, relocation of timber stairs to pond, and proposed seasonal pier at 1379 Falmouth Road, Centerville as shown on Assessor's Map 229 Parcel 087. **SE3-5848 Reconsideration for review of NHESP letter only. (From 3/16)**

The NHESP comment letter was received.

A motion was made to reconsider the project to address NHESP comments.  
Seconded and voted unanimously by roll call.

The NHESP letter dated March 10, 2021 was read into record.

A condition was required by NHESP.

A motion was made to include the NHESP conditions with the previously approved conditions of approval.  
Seconded and voted unanimously by roll call.

- B. Joseph & Elin Lamb.** Cottage reconstruction, gravel driveway area increase, add vegetation to wetland buffer zone at 20 Marchant's Mill Road, Hyannis as shown on Assessor's Map 266 Parcel 028. **SE3-5857 Continued from 3/2/2021. (From 3/16)**

The applicant was represented by Mike Ball from Marsh Matters Environmental.

A revised plan was submitted on March 12<sup>th</sup> to include 8 holly trees.

The container size of the plants increased from 2 to 4 gallons.

The boat rack will be rotated and relocated out by the pool equipment area.

The proposed work limit was changed.

The revised architectural drawings have also been submitted.

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project with the revised plan.

Seconded and voted unanimously by roll call.

- C. Edmund Lukas.** Proposed vista pruning and tree trimming to include topping and creating tree snags at 6 Leonard Road, West Barnstable as shown on Assessor's Map 136 Parcel 011 002. **DA-21013 Continued from 3/9/21 (From 3/16)**

The applicant was represented by Brad Holmes of Environmental Consulting and Restoration.

Letter from DMF mentioned the project will not result in a limited take.

**Issues discussed:**

- A question was raised of the location of the resource area where the trees are marked. The trees in the 0-50' buffer outside the view corridor.
- The purpose of the project is for an additional view. The vista pruning policy allows to get a view and maintain a view. They are asking for additional vista view area.
- A secondary corridor could be applied for and approved. Some of the trees are outside the view corridor.
- The aesthetics of topping 3 trees in the 50' buffer would be the wrong thing to approve.
- A view corridor this wide is not normally approved.
- There was discussion on adding a second view corridor.
- The Commission would like tree number 1 confirmed as in the 50 to 100' buffer.
- The representative requested to swap the approved tree number 7's removal for topping of tree number 1. They will withdraw trees 2, 3 and 4, and continue with 1, 5 and 6 being topped.
- Nothing will happen with 2, 3, and 4.
- A revised plan should be submitted.

There was no public comment.

A motion made to approve project subject to a revised plan indicating no cutting of tree #2, #3, #4. Tree #7 will be allowed to have a natural topping at approximately 3.5ft. Trees #1, #5 and #6 may have some natural topping. A letter shall be submitted with a letter describing the revisions.

Seconded and voted unanimously by roll call.

- D. **William and Vicki Wessel.** Cut back and trim down vegetation that is encroaching in lawn and to house at 93 Ocean Avenue, Centerville as shown on Assessor's Map 226 Parcel 074. **DA-21015 Continued from 3/9/21. (From 3/16)**

The applicants represented themselves.

**Issues discussed:**

- The project is entirely inside the 50' buffer.
- The vegetation is a non-native species that has taken over the area.
- This is an RDA not an NOI so there is no restoration plan or planting plan.
- The area was lawn prior to it becoming overgrown. It was an impervious parking lot for the cranberry bog prior to that.
- No lawn space will be created.
- The applicant just wants to clear up the fence line and cut back from the deck/house.
- Commissioners discussed the amount of work requested under an RDA application. It may need to be filed as a NOI.
- A concern was raised that there is completely unidentified vegetation in the project.
- Trained individuals could be approved to do the work. He could hire an environmental consulting company to identify the species.
- There may need to be a restoration plan.
- File SE3-4190 may have information included that would be helpful.
- The plan was not to remove it. It was just to cut it back.
- It was recommended that the Commission give him permission to remove the vegetation that is encroaching onto the house and hire a consultant to come up with a plan for the rest of the area in the 50' buffer.
- The vegetation is approximately 4' from the corner of the deck. He could get 10' of clearance for passage around the house.
- A revised sketch that would allow him to remove 10' from the house should be submitted.

There was no public comment.

A motion was made to approve the project as a negative determination subject to receipt of a revised plan indicating a 10' clearance between deck and invasive plants. In future the applicant will consult with staff on appropriate filing for invasive removal.

Seconded and voted unanimously.

- E. **Steven Cohen.** To construct and maintain a timber boardwalk, pier, ramp and float at 209 Bay Street, Osterville as shown on Assessor's Map 117 Parcel 158. **SE3-5850 Continued from 3/2/21**

The applicant was represented by John O'Dea P.E. of Sullivan Engineering and Consulting.

Comment letter from Waterways Committee and Harbor Master dated 2/24/2021 was read into record.



DMF comment letter dated 2/26/2021 was read into record  
Shellfish report from Liz Lewis dated 2/26/2021 was reviewed and states the area has a 10 out of 10 significance rating.  
Natural Resources letter dated 2/26/2021 was read into record  
Shellfish Committee letter dated March 12, 2021 was read into record.

**Issues discussed:**

- These valued resources for the public are getting rarer and rarer. Piers are not good for shellfish.
- There was discussion on the depth of water under the engine of boat.
- The waterways committee was presented with other areas nearby and it is not a pinch point in the harbor or the channel.
- The shellfish survey was discussed.
- A question was raised if there was a pier at this location previously. Yes but the previous owner did not go through the amnesty provision.

**Public comment:**

John Townes president of Barnstable Association of Recreational Shellfishing stated they do not want to lose another precious resource of shellfishing. BARS asked that they deny the request of the application.

Patricia Farinha Vice president of BARS. When property changes hands the conditions of the Orders of Conditions do not get carried forward. There is no tight system to keep track of the approved vessels. The more shellfish in the area the cleaner the water will become.

Chris Clark – Appreciates the letters from the Shellfish Committee and Shellfish Constable. She planted the area with quohog seed while employed by the Town. You do not get any higher than a 10 rating. She questioned why it would be approved in a high shellfish area. Every time a pier is approved they are losing a high value shellfish area. It is near a public landing area that people can walk to. She would like the Commission to deny the application and support preserving a high value shellfish area.

Stuart Rapp – Chairman of Shellfish Committee and a recreational shellfish digger. This area is rated as a 10 and would like to reiterate the rating has been adopted by the Commission and represents something very significant. This is critical shellfish habitat and is very accessible to shellfish diggers in the Town of Barnstable. There are 3500 licenses issued in the Town per year. Placing this dock in this pinch point is a concern to the shellfish habitat because there is a twin engine, 36' vessel proposed to be placed at the end of the dock. The shellfish will be pushed further to the west. The area will be ruined through prop dredging, and will cause shellfishermen to be moved out of the area. He would like the application denied.

**Issues discussed:**

- A question was raised if there is any option to look at a smaller boat with a lesser impact. John O'Dea advised it is important to point out that there is a dock on either side, and a boat ramp which is very heavily used. The Commissions regulations show that they can co-exist and this area is a perfect example of it. Does not feel this pier would change that.
- A high shellfish rating is not a means for denying an application. They are to determine the level of protection. The regulations provide the amount of water under the prop. This pier does not require any waivers. It fully complies with the regulations.
- It is available for a pier under the State and local regulations for a pier.
- There was further discussion on the size of the engines and the boat.
- There was discussion about many overlapping and contradicting issues involved with this project. It does meet the regulation requirements and does not require any waiver.
- In the past they have approved a dock using the 30 inch rule.



A motion was made to approve the application as submitted.

Second

4 aye

2 nay

Motion carries 4-2.

**V. CERTIFICATES OF COMPLIANCE** (ez = no deviations, staff recommends approval) (\* = on-going conditions)

- |    |  |          |           |   |
|----|--|----------|-----------|---|
| A. | Chodes                                   | SE3-5431 | (coc, ez) | Raze & construct single family dwelling * |
|    | 791 Santuit-Newtown Road, Marstons Mills |          |           | - Long Pond                               |
| B. | Kirby                                    | SE3-5691 | (coc, ez) | Raze & construct single family dwelling * |
|    | 77 Sunset Lane, Barnstable               |          |           | - Barnstable Harbor                       |
| C. | Gerbereux                                | SE3-5705 | (coc, ez) | construct single family dwelling *        |
|    | 96 Waters Edge, Marstons Mills           |          |           | - Middle Pond                             |
| D. | Eddy                                     | SE3-5620 | (coc, ez) | construct roadway *                       |
|    | Daffodil Lane, Barnstable                |          |           | - isolated wetland                        |
| E. | Haseotes                                 | SE3-5617 | (coc, ez) | modify pier, ramp, floats, & pilings *    |
|    | 773 South Main Street, Centerville       |          |           | - Centerville River                       |
| F. | Blakeley                                 | SE3-4936 | (coc, ez) | construct therapy pool *                  |
|    | 250 Windswept Way (South), Osterville    |          |           | - Cotuit Bay                              |
| G. | Langway                                  | SE3-5113 | (coc, ez) | construct pool (not done)                 |
|    | 434 Sea View Avenue, Osterville          |          | -         | shrub & wooded swamps; flood zone         |

A motion was made to approve A-G.

Seconded and voted unanimously by roll call.

**VI. MINUTES**

A. February 16, 2021

B. March 2, 2021

C. March 9, 2021

A motion was made to approve the minutes as written.

Seconded and voted unanimously by roll call.

A motion was made to adjourn.

The time was 10:16 p.m.